85-939

Supreme Court, U.S.
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 198_

MICKI ANN RAMIE,
Petitioner

v.

CITY OF HEDWIG VILLAGE,
WILLIAM RUSH,
and
REX WHITE,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
to the
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Hedwig Village Police violate Micki Ramie's rights to privacy in gender and religion during the course of a sham investigation conducted at the Hedwig Village police headquarters, by repeatedly demanding to know whether Ramie was a man or a woman, by demanding to know whether Ramie believed in Jesus Christ, by telling Ramie to turn to Jesus Christ, and by ordering her to change the gender designation on her Texas driver's license from "female" to "male"?

2. Can the deterrent purpose behind the exclusionary rule be fulfilled by allowing a recovery in tort against the Hedwig Village Police for their improper interrogation of Micki Ramie?

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PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

NOW COMES MICKI RAMIE, Petitioner, and files this Petition for Writ of Certiorari and shows the Court as follows:

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is published at 765 F.2d 490 and is reproduced in the Appendix.

STATEMENT OF JURISDICTION

1. The Court of Appeals entered its Judgment on July 15, 1985.

2. The Court of Appeals denied Petitioner's Suggestion for Rehearing on August 19, 1985.

3. The statute which confers on the Court jurisdiction to review the judgment by writ of certiorari is 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend I.

2. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV.

3. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const. amend. IX.

4. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

5. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

PRELIMINARY STATEMENT

This case raises the question whether the Constitution prohibits unreasonable governmental intrusion into a person's gender classification and religious beliefs. Furthermore, this case presents the question whether the Constitution allows a police officer to order a female to file an official document reflecting that she is male.

STATEMENT OF THE CASE

1. BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT

The District Court exercised jurisdiction conferred by 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

2. DISPOSITION BELOW

Petitioner brought suit against the City of Hedwig Village, Police Chief Jimmy Jones, Police Lieutenant William Rush, and Police Sergeant Rex White under 42 U.S.C. § 1983 for constitutional rights violations. Jury trial of the case lasted from April 9 to April 13, 1984. At the conclusion of the evidence, Hon. John V. Singleton, Jr., Chief Judge for the Southern District of Texas, directed a verdict in favor of Chief Jones but overruled the City's motion for directed verdict. Neither Lieutenant Rush nor Sergeant White moved for a directed verdict.[1]

The jury found that:

a. Lieutenant Rush violated Petitioner's constitutional rights to privacy in gender and religion;

b. Sergeant White violated Petitioner's constitutional right to privacy in gender;

c. the actions of Rush and White proximately caused injury to Petitioner;

d. neither Rush nor White acted with a good faith belief that their actions were proper;

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1. The Fifth Circuit ruled that Rush and White did move for a directed verdict. *Ramie*, 765 F.2d 490 at 492 n.1.

e. the City, through Chief Jones, violated Petitioner's constitutional right to privacy;

f. the City proximately caused injury to Petitioner;

g. Petitioner was damaged in the amount of $107,000.00;

h. Lieutenant Rush should pay exemplary damages of $5,000.00; and

i. Sergeant White should pay exemplary damages of $10,000.00.

The district court entered judgment in accordance with the verdict and, in addition, awarded Petitioner $35,000.00 in attorney fees and $8,607.85 in expenses.

The City, Lieutenant Rush, and Sergeant White appealed. The Fifth Circuit panel (Judges Reavley, Johnson, and Higginbotham) reversed, holding that Petitioner failed to present evidence of a violation of constitutional rights.

3. STATEMENT OF FACTS

During an interrogation conducted inside the Hedwig Village police station on August 5, 1980, Police Lieutenant Rush and Police Sergeant White repeatedly threatened to send Micki Ramie to prison for claiming to be a woman. (IV, 75-84).[2] Since the interrogation, Micki

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2. References to the record are given in parentheses. Roman numerals indicate the volume number; arabic numerals indicate the page number. There are a total of eight volumes in the record. Volumes four through eight constitute the transcript of the five days of trial proceedings.

References to the exhibits are given as "P.X. ____" for plaintiff's exhibits.

has suffered an acute traumatic neurosis characterized by long-term depression, anxiety, nightmares, loss of self-confidence, and an unreasonable fear of the police. (IV, 87-88; VI, 26; VII, 128). The events which led up to the Ramie interrogation and the filing of this lawsuit deserve a careful retelling.

On Wednesday evening, July 30, 1980, Micki Ramie verbally reprimanded a young boy for shoving grocery carts into the cars in the parking lot behind Ramie's apartment complex.[3] (IV, 74; IV, 86). Micki immediately reported the mischief by telephone to the Hedwig Village Police and to the apartment manager. She left a follow-up note in the manager's office early on July 31. (IV, 65; IV, 86, VII, 45).

On the morning of August 1, the child's mother called the police to complain that "a male dressed as a female" had grabbed the boy and shaken him during an altercation in the parking lot. According to the mother, the incident "had just occurred."[4] (VII, 31; V, 19). Sergeant White took the mother's call and immediately drove to the apartment complex to search for "a short, white male, deep voice, broad shouldered, wearing a vinyl wig" over "side burns and a beard", and dressed in a woman's pantsuit. (V, 18; V, 20; VII, 11).

The description fits Micki Ramie, with one important exception: Micki Ramie is a woman.[5] (V, 209). She

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3. According to the statement signed by the child's mother, the incident occurred on July 27, 1980, four days before she first contacted the Hedwig Village Police. (VII, 15).

4. The mother's complaint to the police was apparently made in retaliation for Micki's report to the apartment manager. (VII, 48).

5. Respondents contested this fact until the first day of trial. (IV, 15-16; IV, 101-02). Up to that point, Respondents took the

suffers from congenital adrenal hyperplasia, also called genital adrenal hyperplasia, adrenogenital hyperplasia, adrenogenital syndrome, or simply AGH. (V, 221; VI, 14). AGH causes an endocrine imbalance which, in turn, causes male secondary sex characteristics (such as facial hair, a deep voice, and balding[6]) to appear in otherwise normal females.[7] (V, 222).

On Sergeant White's first trip to the apartment complex, he established that the "assault" was not the emergency that the mother had described. (V, 32). He learned Micki's identity and knocked on her door, but it was Friday and she was away at work. (V, 34). White waited until the following Monday, August 4, to attempt to contact Micki for the second time. (V, 35). By Tuesday, August 5, he still had not spoken with Micki, so he left a note on her door instructing her to call the police station. (V, 36-37). When she did so, the only information Lieutenant Rush gave her was that she had fifteen minutes to get to the station or he would send a police officer after her. (IV, 67).

Micki arrived at the station and discovered that the lock on the front door was controlled electronically by police personnel inside the building. (IV, 68; V, 54).

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position that Micki was a man or perhaps a hermaphrodite. *See, e.g.*, Deposition of Dr. Harold B. Levy, (V, 224-46) (Counsel for Respondents asking whether Micki's indeterminate gender at birth indicated hermaphroditism (V, 230-31) and whether her surgically altered clitoris "would continue to grow and develop" into a penis (V, 238-39)). Respondents even filed a motion referring to Micki as "he/she."

6. Micki wears a wig because she is partially bald. (V, 87-89).

7. The primary (internal) reproductive organs (ovaries or testicles) determine a person's gender. (V, 237). Micki Ramie has normal ovaries and lacks any testicular or penile tissue. (V, 230-33). She is therefore female.

After she got inside, Rush and White asked for her identification. (IV, 68). She started back to her car to get her billfold, but the officers followed her and searched the interior of the car, the glove box, and the trunk before allowing her to get her driver's license.[8] (IV, 68-69). Then the officers led her back inside the station to a small office, closed the door behind them, and for the first time told Micki why she had been summoned for questioning. (IV, 69-74).

White said that Micki had been accused of posing as an off-duty police officer, carrying a gun, and showing the gun to the unruly child during the July 30 parking lot "assault." (IV, 74-75).[9] The officers would not let Micki give her side of the parking lot incident; they told her "to shut up and just say yes or no." (IV, 75; IV, 77).

At this point, Micki knew that the doors were closed on her and felt that she could not have gotten out of the interrogation room if she wanted to.[10] (IV, 73; IV, 121). She felt dwarfed by the officers (they are taller than she by a foot) and intimidated by their guns. (IV, 84). Officers Rush and White made matters worse by cursing and threatening to send her to "Huntsville Penitentiary" continuously during the course of the interrogation.[11] (IV, 75-77; IV, 81-82; IV, 84).

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8. When Micki asked them whether they had a search warrant, they replied, "We don't need one. We are policemen." (IV, 110).

9. White admitted at trial that no one had accused Micki of showing the gun to the child. (V, 24).

10. The officers kept Micki's car keys and driver's license until they dismissed her. (IV, 85; IV, 87).

11. The Texas Department of Corrections has its headquarters in Huntsville, Texas. Several state prison units are located there.

Rush and White spent a total of three minutes investigating the charges of impersonating an officer, carrying a weapon, and assaulting a child.[12] (IV, 82-84). They spent another hour and ten minutes badgering Micki about her gender, despite the indication on her driver's license that she is female. (IV, 84; IV, 81). White began by asking Micki, "[A]re you a man or a woman?"[13] (IV, 76). Then, White advised Micki Ramie, "You couldn't even be a pimple on one of our officers' asses, let alone an officer of the Hedwig Village Police Department."[14] (IV, 76; V, 74; V, 83). Finally, White asked Micki whether she had "a vagina or a dick." (IV, 77). Micki asked to make a phone call, but the officers told her to shut up. (IV, 77).

Micki told the officers that she has dressed as a woman all of her life because she is a woman. (IV, 77). When White discovered that Micki was born and raised in Louisiana, he remarked, "You mean to tell me that after all of those years that you have been dressing as a woman and none of those red necks jumped on you and beat the shit out of you?" (IV, 79). Rush added, "Then you

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12. At trial, White told the jury that he had been "courteous and lenient" to Micki overall since he had not charged her with any of these alleged offenses. On further examination by the Court, White admitted that there was insufficient evidence to warrant any formal charges against Micki. (V, 107-14).

13. White admitted asking Micki about her gender at least three times. (V, 66-67).

14. White not only admitted making this statement at trial (V, 74-84), but also proudly included it in the written report he filed on the day of the interrogation. (P.X. 12; V, 77) ("I advised Raime [sic], "He wouldn't make a pimple on a police officers [sic] butt—let alone ever be one." ") Lieutenant Rush confirmed the statement at trial (VII, 80-81) and admitted to Judge Singleton that he felt the statement was an indiscretion at the time it was made. (VII, 94-96).

are just a lucky son of a bitch." (IV, 79). Micki attempted to explain her hormone imbalance to the officers, but they interrupted her with "That's what all you freaks and wierdos say." (IV, 79-80). White taunted Micki about being raised by her grandparents: "How about this, Lieutenant, even *its* parents didn't want it. They pushed *it* off on its grandparents." (IV, 80).

White and Rush also threatened to have a female police department employee conduct a strip search to determine whether Micki had male or female genitals.[15] Their search proposal involved two equally evil alternatives. If the search showed that Micki was a man, they would charge Micki with rape of the matron. On the other hand, if Micki proved to be a woman, they would send her to "Huntsville" anyway. (IV, 84).

Micki was scared to death and thought her only way to get away from her tormentors was to say that she was a man. (IV, 82). White promised to let her go if she would admit she was a man dressing as a woman. (IV, 80). She finally told them that she was a man and that she would stop dressing as a woman. (IV, 82). After her admission, the officers ordered her to change the "lie" about her gender on her driver's license. (IV, 80).

At this point, the questioning turned to Micki's religious beliefs. Rush asked her if she believed in Jesus Christ.[16] (IV, 80). When she replied that she did, he asked her whether she knew what Jesus Christ thought of her. (IV, 80). He told her that she was "an abomina-

15. The officers actually forced Micki to remove her wig. (V, 88-90).

16. Rush admitted that he asked this question and that he told Micki "to turn to Jesus for help." (VII, 75).

tion in the eyes of the Lord." (IV, 80). He then warned her,

> Ramie, you better start dressing and acting like the man that God made you to be or we will put you in jail with all the other nuts and let them teach you a lesson. Then you will be glad to act like the man God made you to be. Now you go and buy you some jeans and cowboy boots and cowboy shirts and be the man God made you to be.

(IV, 80-81).

Before the officers released Micki, they gave her one week to "clean up [her] act" and told her they would be watching her. (IV, 82; IV, 92-93). She now lives with the fear that Rush and White will harm her because she filed this suit. (IV, 87-89).

REASONS RELIED ON FOR ALLOWANCE OF WRIT

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE RULINGS OF THIS COURT ON PRIVACY RIGHTS.

II. THE DECISION BELOW WILL HAVE THE EFFECT OF MINIMIZING THE AVAILABILITY OF A TORT REMEDY TO REDRESS POLICE MISCONDUCT.

III. THE OFFICERS' CONDUCT CANNOT BE CONDONED BECAUSE IT VIOLATES BASIC PRINCIPLES OF DUE PROCESS.

The Fifth Circuit panel reasoned that:

A. Ramie proved her privacy had been invaded; but

B. Gender and religion do not involve the most intimate aspects of human affairs, so the invasion of Ramie's privacy could not have been a violation of constitutionally protected rights; and

C. If gender and religion *are* among the most intimate aspects of human affairs and are constitutionally protected privacy rights, the slight invasion of Ramie's privacy was outweighed by the government's legitimate interest in conducting a criminal investigation, and no constitutional violation was shown.[17]

Micki Ann Ramie v. City of Hedwig Village, 765 F.2d 490 (5th Cir. 1985).

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE RULINGS OF THIS COURT ON PRIVACY RIGHTS.

This Court has not yet specifically held, on the facts presented here, that gender and religion are constitutionally protected areas of privacy, but prior rulings of the Court on privacy rights encompass the personal matters at issue here.

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17. The Fifth Circuit applied the balancing test enunciated in *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981): "An intrusion into the interest in avoiding disclosure of personal information will thus only be upheld when the government demonstrates a legitimate state interest which is found to outweigh the threat to the plaintiff's privacy interest." Since the jury specifically found that Rush and White had not acted in good faith, it is difficult to understand how the appellate panel reached the conclusion, as it must have, that Rush and White were conducting a legitimate criminal investigation. In any event, Petitioner suggests that the Fifth Circuit applied an improper standard to reach its holding. The state should be required to show a *compelling* interest before intrusions of the magnitude present here are justifiable.

A. GENDER

The constitutional privacy protection afforded to decisions about marriage, *Zablocki v. Redhail,* 434 U.S. 374 (1978); *Loving v. Virginia,* 388 U.S. 1 (1967), procreation, *Roe v. Wade,* 410 U.S. 113 (1973); *Doe v. Bolton,* 410 U.S. 179 (1973), and contraception, *Carey v. Population Services International,* 431 U.S. 678 (1977); *Griswold v. Connecticut,* 381 U.S. 479 (1965), necessarily implies that gender is also protected from unwarranted governmental intrusion. Since we do not "allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives," *Griswold,* 381 U.S. at 485-86, we should certainly not allow the police to probe into the nature of our sexual organs.

Again, if the Constitution recognizes a privacy interest in the decisions to marry, to use contraceptives, or to undergo an abortion, there must necessarily be a privacy interest in gender itself. It would be inconsistent to grant protection to procreative choices without also granting protection to the physical attributes which nature bestows to make procreation possible. Finally, it defies logic to postulate that gender is not one of "the most intimate aspects of human affairs." *Ramie,* 765 F.2d at 492. Gender makes possible sexual intimacy, the most physically intimate aspect of all human affairs.

Aside from the right to privacy in marital and procreative decisions, this Court has identified an "individual [privacy] interest in avoiding disclosure of personal matters." *Whalen v. Roe,* 429 U.S. 589, 599 (1977). This right of confidentiality embraces "the right to be free from state inquiry into the contents of [a private

pornography] library," *Stanley v. Georgia,* 394 U.S. 557, 565 (1969), the right to be free from unwarranted governmental inquiry into personal finances, *California Bankers Assoc. v. Shultz,* 416 U.S. 21, 78-79 (1974) (Powell, J. concurring), *id.,* 416 U.S. at 82 (Douglas, J., dissenting), and "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." *Stanley,* 394 U.S. at 564 (citing *Olmstead v. United States,* 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)); *see also, Garguil v. Tompkins,* 704 F.2d 661 (2d Cir. 1983), *vacated on other grounds,* 465 U.S. 1016 (1984) (Oakes, J., concurring) (the right to privacy and to bodily integrity are parts of a larger constitutional right of "personhood".) Clearly, gender is a matter more personal than pornographic tastes or banking records. In short, there exists a constitutional "right to be let alone" in the privacy of one's gender.

B. RELIGION

The First Amendment to the Constitution guarantees freedom of religion. This Court has said that "the First Amendment has a penumbra where privacy is protected from governmental intrusion." *Griswold,* 381 U.S. at 483; *see also, Roe v. Wade,* 410 U.S. 113, 152 (1973) (noting that the Court in *Stanley* found the roots of the privacy interest in the First Amendment). The Fifth Circuit has said that "religion is perhaps the quintessentially private matter." *Doe v. Stegall,* 653 F.2d 180, 186 (5th Cir. 1981); *accord, Karr v. Schmidt,* 460 F.2d 609, 615- (5th Cir.), *cert. denied,* 409 U.S. 989 (1972). Clearly, religious beliefs are protected from governmental intrusion.

II. THE DECISION BELOW WILL HAVE THE EFFECT OF MINIMIZING THE AVAILABILITY OF A TORT REMEDY TO REDRESS POLICE MISCONDUCT.

III. THE OFFICERS' CONDUCT CANNOT BE CONDONED BECAUSE IT VIOLATES BASIC PRINCIPLES OF DUE PROCESS.

"The most basic function of any government [is] to provide for the security of the individual and his property." *Illinois v. Gates*, 462 U.S. 213, 237 (1983). For more than a decade, this Court has been struggling with a rational method of fulfilling this basic function while still honoring the Fourth Amendment's prohibition against illegal searches. The Court in its "balanced judgment" has concluded that absolute application of the exclusionary rule should be abandoned in favor of a determination which would allow into evidence the fruits of an improper but good faith search. *Id.* at 241.

Early in the analysis of the "good faith exception," it was suggested that it was more appropriate to punish the offending officer than to allow both the guilty officer and the guilty defendant to go free. *Schneckloth v. Bustamonte*, 412 U.S. 218, 268 n.26 (1973) (Powell, J., joined by Burger, C.J., and Rehnquist, J., concurring). Courts could solve the improper search dilemma by allowing a tort remedy against the offending police officer as a deterrent from future improper searches. A "tort remedy would give the courts an occasion to rule on the content of constitutional rights . . . and it would provide the real consequence needed to give credibility to the guaranty." *Id.* (citing Oaks, *Studying the Exclusionary Rule on Search and Seizure*, 37 U. Chi. L. Rev. 655,

756-57 (1970); *see also, Stone v. Powell,* 428 U.S. 465, 501 (1976) (Burger, C.J., concurring).

It is clear in this case that the government did not keep Micki Ramie secure in her person. Instead, its minions, under color of law, harassed and abused her. She was guilty of no crime, but the officers were guilty of official oppression. Here, then, is the case where the constitutional rights of the individual can be protected by providing a tort remedy that will deter similar incidents in the future.

The time has passed when the rights of the guilty exceed the rights of the innocent. Mr. Justice Frankfurter's words of three decades ago ring true in this case:

> Due process of law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend 'a sense of justice.'
>
> So here, to sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society.

Rochin v. California, 342 U.S. 165, 173 (1952).

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully requests the Court to grant her Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that three true and correct copies of this Petition for Writ of Certiorari have been served by certified mail, return receipt requested, on each of the following persons:

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No 84-2323

MICKI ANN RAMIE,
Plaintiff-Appellee,

versus

THE CITY OF HEDWIG VILLAGE, TEXAS, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the
Southern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 7-15-85, 5 Cir., 198__, ____F.2d____)

(August 19, 1985)

Before REAVLEY, JOHNSON and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc

(Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

* * *

ENTERED FOR THE COURT:

/s/ THOMAS M. REAVLEY
United States Circuit Judge

APPENDIX B

Micki Ann RAMIE,
Plaintiff-Appellee,

v.

CITY OF HEDWIG VILLAGE, TEXAS, et al.,
Defendants-Appellants.

No. 84-2323.

United States Court of Appeals,
Fifth Circuit.

July 15, 1985.

Civil rights action was brought against city and police officers alleging violation of plaintiff's constitutional right to privacy. The United States District Court for the Southern District of Texas, John V. Singleton, Jr., Chief Judge, directed a verdict in favor of one defendant, and awarded judgment on jury verdict in favor of plaintiff, and city and two police defendants appealed. The Court of Appeals, Reavley, Circuit Judge, held that government's interest in conducting criminal investigations outweighed any invasion of plaintiff's privacy and therefore plaintiff failed to present evidence that her constitutional rights were violated by police questioning about her gender and religious beliefs; furthermore, allegedly abusive manner in which the questions were asked did not amount to an unconstitutional invasion of privacy.

Reversed.

Appeals from the United States District Court for the Southern District of Texas.

Before REAVLEY, JOHNSON and HIGGINBOTHAM, Circuit Judges.

REAVLEY, Circuit Judge:

Micki Ann Ramie brought a civil rights action, 42 U.S.C. § 1983 (1982), against the City of Hedwig Village, Rex White, William Rush, and Jimmy Jones for violating her constitutional right to privacy. After the district court directed a verdict in favor of Jones, the jury awarded Ramie $122,000, and the district court awarded her $43,607.85 for attorney's fees and costs, *see* 42 U.S.C. § 1988 (1982). The City, White, and Rush appeal. Holding that no constitutional right was violated, we reverse.

White, a sergeant on the City's police force, received a complaint from a citizen that a man dressed as a woman, representing himself as an undercover city police officer, had assaulted her son. White's investigation led him to Ramie. Ramie, a female, suffers from congenital adrenal hyperplasa, a condition that causes her to overproduce male hormones, giving her certain male secondary sex characteristics such as a deep voice and facial hair.

At the request of White, Ramie voluntarily appeared at the police headquarters for questioning. What occurred during the questioning was hotly contested at trial. According to Ramie, the questioning lasted approximately an hour and fifteen minutes, during which White and Rush repeatedly questioned and harassed her about her gender, threatened to send her to the penitentiary if she did not admit she was a man and act and dress accord-

ingly, and asked whether she believed in Jesus Christ. According to White and Rush, the questioning lasted about twenty minutes. During the interview, they questioned Ramie about her sex to determine her identity and inquired about her religious beliefs only after she had indicated that her present lifestyle bothered her. White and Rush, although with hindsight they confessed that they may have committed some indiscretions, denied that they threatened or harassed Ramie.

On appeal, the City, White, and Rush first argue that there was no evidence to support a finding that Ramie's constitutional right to privacy was violated.[1] Ramie argues that evidence of White and Rush questioning her about her gender and religious beliefs supported the jury's finding.

[1, 2] The Constitution protects individuals against invasion of their privacy by the government. *See Whalen v. Roe,* 429 U.S. 589, 598-602, 97 S. Ct. 869, 876-78, 51 L.Ed.2d 64 (1977); *Fadjo v. Coon,* 633 F.2d 1172, 1175-77 (5th Cir. 1981); *DuPlantier v. United States,* 606 F.2d 654, 669-71 (5th Cir. 1979), *cert. denied,* 449 U.S. 1076, 101 S. Ct. 854, 66 L.Ed.2d 798 (1981); *Plante v. Gonzales,* 575 F.2d 1119, 1132 (5th Cir. 1978), *cert. denied,* 439 U.S. 1129, 99 S. Ct. 1047, 59 L.Ed.2d 90 (1979). The liberty interest in privacy encompasses two notions: the freedom from being required to disclose

1. Ramie argues that White and Rush waived any claim of insufficiency of the evidence by failing to move for a directed verdict at the close of all the evidence. *See Wells v. Hico Indep. School Dist.,* 736 F.2d 243, 248-49 (5th Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3302 (U.S. October 23, 1984) (No. 84-545). The record clearly shows, however, that all defendants moved for a directed verdict on the grounds that there was no evidence of a constitutional violation.

personal matters to the government and the freedom to make certain kinds of decisions without government interference. *Whalen,* 429 U.S. at 599-600, 97 S. Ct. at 876, 51 L.Ed.2d at 73. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern. *Id.* at 600-02, 97 S. Ct. at 877-78, 51 L.Ed.2d at 73. There was no evidence that either police officer or the City disclosed any information obtained during the questioning. Therefore, Ramie's claim is that the asking of the questions about her gender and religious beliefs constituted a violation of her constitutional right to privacy.

[3] To determine whether the questioning amounted to a violation of Ramie's right to privacy, this court must decide whether the invasion of privacy proved by Ramie outweighs the government's legitimate interests. *See id.,* 97 S. Ct. at 877-78, 51 L.Ed.2d at 74; *Fadjo,* 633 F.2d at 1176. In *McNally v. Pulitzer Publishing Co.,* 532 F.2d 69, 76-77 (8th Cir.), *cert. denied,* 429 U.S. 855, 97 S. Ct. 150, 50 L.Ed.2d 131 (1976), the court stated that the constitution is violated only by invasions of privacy involving the most intimate aspects of human affairs. For example, in *Whalen,* 429 U.S. at 602, 97 S. Ct. at 878, 51 L.Ed.2d at 75, the Court held that requiring the disclosure of persons receiving medications to state health agencies did not amount to an impermissible invasion of privacy, especially where there is regular disclosure of similar information to doctors, hospital personnel, and public health agencies. Gender and religious beliefs are generally not such intimate matters and are subject to public exposure. Ramie's license, which she showed to

White and Rush, indicated her gender. Furthermore, Ramie introduced evidence at trial that she regularly attended church. Weighed against this slight invasion of privacy stands the City's legitimate interest in questioning persons suspected of committing crimes. Although in retrospect some question may be determined to be irrelevant and not within the government's proper sphere of concern, police officers must have the freedom at least to ask the questions they believe will aid them in the investigation. Because we hold that the government's interest in conducting criminal investigations outweighs any invasion of Ramie's privacy, Ramie failed to present evidence that her constitutional rights were violated.

An undercurrent running through this case, both at trial and on appeal, is that White's and Rush's *manner* in asking the questions violated her constitutional right to privacy. Ramie, however, cites no case to support the proposition that asking otherwise proper questions in an abusive and harassing manner amounts to an unconstitutional invasion of privacy. That abusive and harassing police questioning does not violate the constitutional right to privacy does not mean that persons so treated are without legal rights. Confessions obtained through coercive tactics are, of course, inadmissible. State tort remedies may also be available.

Because we hold that Ramie failed to prove that her constitutional right to privacy was invaded, we reverse and need not reach the remaining issues raised by the City, White, and Rush. Because there was considerable confusion at trial as to what is required to establish municipal liability under section 1983, however, we address that matter briefly.

In *Monell v. Department of Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978), the Court held that local governments are liable under section 1983 where official policy or governmental custom is responsible for a deprivation of rights protected by the constitution. In *Bennett v. City of Slidell,* 728 F.2d 762, 770 (5th Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3419 (U.S. Dec. 4, 1984) (No. 84-797), this court noted that to establish liability based on the existence of a policy, *Monell* requires that the policy complained of must itself, as opposed to the way it is carried out by city employees, deprive a plaintiff of a constitutional right. *See, e.g., Monell,* 436 U.S. at 661-62, 98 S. Ct. at 2020-21, 56 L.Ed.2d at 617 (City of New York maintained policy which unconstitutionally compelled pregnant employees to take unpaid leaves of absence before required for medical reasons). The *Bennett* court also discussed municipal liability based on custom. The court stated that a section 1983 plaintiff could establish custom by proving that constitutionally objectionable behavior was sufficient in duration or frequency to the extent that it was acceded to by the maker of official policy. 728 F.2d at 766, 768.

[4] The latest writing by the Supreme Court is *City of Oklahoma City v. Tuttle,* ____U.S.____, 105 S. Ct. 2427, 85 L.Ed.2d ____ (1985). The plurality opinion authored by Justice Rehnquist would require that the damaging incident be "caused by an existing, *unconstitutional* municipal policy. . . ." ____ U.S. at ____, 105 S. Ct. at 2436 (emphasis added). Justice Brennan expressed a different view of the causal connection required between municipal policy and the constitutional deprivation: "[A] plaintiff must prove, in the broad causal

language of the statute, that a policy or custom of the city 'subjected' him, or 'caused him to be subjected' to the deprivation of constitutional rights." ____ U.S. at ____, 105 S. Ct. at 2439. However, both opinions reject the contention that a single incident of police misbehavior can establish a municipal policy or custom. Any abusive aspect of the interrogation of Ramie would not, therefore, alone prove an objectionable city policy.

To establish the City's liability, Ramie proved only her own interrogation and elicited testimony from Jones, the police chief, that it was within the police force's policy to ask suspects their gender and that, although there was no policy on discussing religion with suspects, he saw nothing wrong with White and Rush bringing up the subject. Ramie also introduced evidence of a civil rights judgment rendered against White for false imprisonment and cruel and unusual punishment.

[5] Under *City of Oklahoma City* and *Monell*, the above evidence was insufficient to establish the City's liability. Assuming that the police chief was delegated policy-making authority, there was no policy or custom attributable to him that was at all objectionable. Isolated events are not sufficient to establish custom. The testimony of a city official might display a culpable attitude or an approval of unconstitutional conduct, but the testimony could not prove a policy by "ratification"—as has been argued here.

Because Ramie failed to introduce sufficient evidence to prove a violation of her right to privacy, the judgment is REVERSED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C.A. NO. H-80-2098

MICKI ANN RAMIE

v.

THE CITY OF HEDWIG VILLAGE, TEXAS, ET AL

JUDGMENT

This action came on for trial before the Court and a jury, and the issues having been duly tried and the jury having duly rendered its verdict,

It is ORDERED, ADJUDGED, and DECREED:

1. That the Plaintiff take nothing of Defendant Jimmy Jones in his individual capacity, and that Defendant Jones recover of Plaintiff his costs of action;

2. That Micki Ann Ramie recover of Defendants the City of Hedwig Village, Sgt. Rex White, and Lt. William George Rush, jointly and severally, the sum of One Hundred Seven Thousand and No/100ths Dollars ($107,-000.00), with interest thereon at the rate of 10.81 percent per annum as provided by law;

3(a). That Micki Ann Ramie recover of Defendant William George Rush the sum of Five Thousand and No/100ths Dollars ($5,000.00), with interest thereon at the rate of 10.81 percent per annum as provided by law;

3(b). That Micki Ann Ramie recover of Defendant Sgt. Rex White the sum of Ten Thousand and No/100ths Dollars ($10,000.00), with interest thereon at the rate of 10.81 percent per annum as provided by law;

4. That Plaintiff recover of Defendants the City of Hedwig Village, Sgt. Rex White and Lt. William George Rush, jointly and severally, her costs of action.

ENTERED this ____ day of _____, 1984.

_____
JOHN SINGLETON
United States District Judge

APPROVED AS TO FORM:

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